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COMMISSION ON HUMAN RIGHTS

Intersessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
First session
31 October-11 November 1994

COMMENTS ON THE PRELIMINARY DRAFT OPTIONAL PROTOCOL

Report of the Secretary-General

Addendum

The present document contains comments submitted by the Governments of Argentina, Belarus, the Federal Republic of Yugoslavia, Philippines and Sweden, and by the International Labour Organisation and the United Nations Children's Fund.

GE.94-14463 (E)

Argentina

[Original: Spanish]
[11 August 1994]

1. As regards document E/CN.4/1994/91, containing the text of the draft optional protocol on the involvement of children in armed conflicts, the Argentine Republic can report that its legislation provides for military service to be rendered only by persons aged 18 or over. Consequently, it indicates its agreement with the terms of the draft.

Belarus

[Original: Russian]
[26 September 1994]

2. The Republic of Belarus approves the terms of the optional protocol on the involvement of children in armed conflicts in so far as they do not contradict Belarusian national legislation. Articles 1 and 2 of the draft, on the inadmissibility of persons who have not attained the age of 18 years taking part in armed conflicts or being called up for military service, are in keeping with the analogous provisions of the Belarusian Rights of the Child Act of 19 November 1993 (art. 29) and Universal Military Conscription and Service Act of 5 November 1992 (art. 14).

3. As the Belarusian Universal Military Conscription and Service Act lays down that citizens who have attained 17 years of age are accepted for military service as students at military academies, it is suggested that the words "or who has not attained the age of 17 years into their military academies" should be added at the end of article 2 of the draft protocol.

4. It is also suggested that there should be a discussion of the possibility of including in the draft additional provisions deriving from the title of the protocol and relating, in particular, to the inadmissibility of persons under the age of 18 taking part in military actions. Provisions such as a ban on propaganda in favour of war or violence among such persons and on the establishment of children's paramilitary formations might also be included in the draft.

Federal Republic of Yugoslavia

[Original: English]
[2 September 1994]

5. With regard to the preliminary draft optional protocol on the involvement of children in armed conflicts, the Government of the Federal Republic of Yugoslavia in principle has no reservations on the contents of the draft optional protocol in respect of existing article 38 of the Convention, because the solutions offered correspond to the legal situation in the Federal Republic of Yugoslavia. Namely, according to the existing legislation in the Federal Republic of Yugoslavia, a conscript is sent to do military service in the year in which he reaches 21 years of age, and, if he himself so requests, at the earliest in the year in which he reaches 18 years of age. In that

sense, the Government of the Federal Republic of Yugoslavia has no reason to oppose the establishment of standards higher than those established by the Convention. The Government of the Federal Republic of Yugoslavia, however, thinks that if the adoption of this optional protocol is pursued, it should not be confined only to the aspect of mobilization, but should be expanded to include the consistent application, i.e. the strengthening, of the existing humanitarian standards and the prevention of different forms of abuse of children in war conflicts, for the purpose of attaining political goals, which remain unpunished (the use of children as a shield).

6. In addition, the Government of the Federal Republic of Yugoslavia thinks that it would be more favourable, before deciding on the optional protocol itself, to wait for the results of the work of experts, who have been given the task, in cooperation with the Centre for Human Rights and UNICEF, to prepare a comprehensive study on this issue, pursuant to the request made in United Nations General Assembly resolution 48/157.

Philippines

[Original: English]
[20 September 1994]

Article 1

7. The Philippines agrees that the age of 18 (in lieu of 15) should be the minimum age for a person to be allowed to take part in armed hostilities, the reason being that a person below 18 years of age is still a minor and his participation in armed conflicts at such an early age would be detrimental to his interests, considering his mental and physical immaturity. The Philippines believes that the age of 18 years is the reasonable age since many countries have adopted this age as the age of majority. Hence, for the sake of consistency, it is but appropriate to adopt the age of 18 as the standard age for allowing a person to participate in armed conflicts.

8. The same comments apply to article 2.

Article 3

9. The Philippines agrees with this provision because under Republic Act 7610, Section 22, it is provided that children shall not be recruited to become members of the Armed Forces of the Philippines or its civilian units or other armed groups, nor be allowed to take part in the fighting or be used as guides, couriers, or spies.

Article 4

10. The Philippines concurs with this provision on non-reservation.

Articles 5 to 10

11. The Philippines concurs with these provisions.

Sweden

[Original: English]
[25 August 1994]

12. Sweden views the elaboration of an optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts as a fundamental step in the work to improve the plight of children in such conflicts worldwide. As sponsor of Commission on Human Rights resolution 1994/91, which recommended the establishment of the working group to elaborate such a draft optional protocol as a matter of priority, Sweden wishes to emphasize the importance which it attaches to raising the age for the recruitment of children to armed forces.

13. The continued exploitation of children as soldiers in conflicts all over the world is an affront to the rights and dignity of the child. Ongoing conflicts show a frightening lack of respect for existing norms. It is the duty of all States parties to ensure the strict implementation of article 38 of the Convention. However, it cannot be acceptable that persons who in every other sense are regarded as children under the Convention are recruited into armed forces and permitted to participate in armed conflict. The only solution commensurate with the best interests of the child is that the age limit for recruitment to armed forces be raised to 18, and that States also commit themselves to preventing children under 18 from participating in hostilities. The Convention on the Rights of the Child should therefore be supplemented by an optional protocol to this effect, which should be applicable in all circumstances.

14. The Swedish Government is grateful to the Committee on the Rights of the Child for the work it has undertaken on the issue of raising the age for the involvement of children in armed conflicts, and in particular the draft optional protocol which is to be used as one basis for the deliberations of the working group. The proposed text provides a sound framework for the work at hand.

15. Children are actively recruited to the armed forces in many armed conflicts. However, their participation in conflicts also results from their voluntary enlistment. The optional protocol should be applicable in both situations. With regard to the participation of children in hostilities, it would be useful to specify that the provision applies equally to direct participation and to the performance of tasks which would qualify them as combatants under international humanitarian law.

16. Sweden, finally, considers it important that reservations not be permitted to the protocol.

International Labour Organisation

[Original: French]
[13 September 1994]

17. Generally speaking, the involvement of children - here understood to mean persons who have not attained the age of 18 years - in armed conflicts does not fall directly within the mandate of the International Labour Organisation.

18. ILO has had occasion to consider certain questions affecting the personnel of armed forces on active duty (Convention No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948, art. 9) or after discharge (Recommendation No. 68, Social Security (Armed Forces) Recommendation, 1944).

19. According to the International Standard Classification of Occupations (ISCO-88), "members of the armed forces are those personnel who are currently serving in the armed forces, including auxiliary services, whether on a voluntary or compulsory basis, and who are not free to accept civilian employment." As regards article 2 of the draft optional protocol, the notion of "auxiliary and assimilated services" should be added to that of armed forces in order to cover, for example, civilians employed in government establishments concerned with defence matters, the police, members of other armed services and members of paramilitary groups.

United Nations Children's Fund

[Original: English]
[26 August 1994]

20. UNICEF welcomes the progress being made towards ending the participation in armed conflict of children under the age of 18.

21. UNICEF considers that the proposed draft text will form an excellent basis for discussion in the working group of the Commission on Human Rights. The Committee on the Rights of the Child deserves great praise for its very fine work in preparing this draft.

22. UNICEF has been informed of the proposals being put forward by the NGO Sub-Group on Refugee Children and Children in Armed Conflicts in Geneva and we hope that due consideration will be given to the views of all NGOs with experience in this area.

23. UNICEF activities in countries embroiled in armed conflict have recognized the need to focus programme initiatives on addressing the psychological effects of trauma and the need to assist children and young people to reintegrate into society. UNICEF would therefore welcome the opportunity to share the research and wealth of experience gained through these programmes with the working group as it performs its mandate.